

AG Contract No.: KR02-0540TRN
ADOT ECS File: JPA 02-038
Project: G 1051 05C
Section: Economic Strength Program (ESP)
Maricopa County 85 (Buckeye Road)
and 97th Avenue

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
CITY OF TOLLESON

THIS AGREEMENT is entered into 12 July, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954 as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and CITY OF TOLLESON, acting by and through its CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 11-201 and 28-7282 et seq to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The City has requested Economic Strength Project (ESP) funds in the amount of \$76,125.00; the Commerce and Economic Development Commission have recommended the approval of such funds for the City, and the Transportation Board has approved the funding, for the construction of improvements to Maricopa County 85 (Buckeye Road) and 97th Ave. to provide improved access, and aid in the retention and development of local business, hereinafter referred to as the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 25378

Filed with the Secretary of State

Date Filed: 07/12/02

Betsy Bayless

Secretary of State

By: Viktor J. Guenewald

II. SCOPE OF WORK

1. The City will:

a. Insure the additional commitment of 70.00% of the total estimated Project cost, or \$177,625.00, whichever is more, from the City or other sources (not including ESP funds) to the Project. Accomplish construction of the Project by public bidding, in strict compliance with State procurement laws, rules and regulations. Upon completion, approve and accept the Project on behalf of the City and provide maintenance.

b. No more often than monthly, invoice the State for ESP funds (Arizona Department of Commerce, ATTN: ESP Program Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012), in an amount not to exceed \$76,125.00

c. Provide the State a copy of the executed Project contract(s), and draw down and expend the State ESP funds no later than twelve (12) months after the effective date of this agreement. Provide the State detailed written reports of all ESP fund expenditures, supported by invoices, receipts or other suitable and appropriate documentation, and a final accounting report no later than thirty (30) days after ESP funds are fully expended.

d. Reimburse the State any funds received from the State under this agreement which are not specifically and directly expended in compliance with the ESP grant application, which is attached hereto and made a part hereof, and are subsequently disallowed by the State.

e. Provide the State (Arizona Department of Commerce, ATTN: ESP Program Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012) with quarterly Project status reports, and one year after completion of the Project, a written Economic Impact Report detailing the direct and indirect impact of the Project, to include jobs created, jobs retained and related data.

2. The State will:

Within thirty (30) days after receipt and approval of the ESP contract(s) and subsequent monthly progress payment invoices, reimburse the City for work completed on the Project funds in an amount not to exceed \$76,125.00.

III. MISCELLANEOUS PROVISIONS

1. The only interest of the Department of Transportation in the Project is to convey economic strength pass through funds for the use and benefit of the City by reason of state law under which funds for the Project are authorized to be expended.

2. The City agrees to indemnify and save harmless the State, or any of its departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance by the State of any of the provisions of this agreement. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys fees.

3. The total amount of ESP funds expended under this agreement shall not exceed 30.00% of the total Project cost. Should the Project not be completed, be partially completed, or be completed at a lower cost than the advanced amount, or for any other reason should any of these ESP funds not be expended, a proportionate amount of the funds provided under this agreement shall be reimbursed to the State.

4. This agreement shall remain in force and effect until completion of said Project, reimbursement and subsequent reports; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental agency, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party. Further, this agreement may be terminated and the ESP grant cancelled by the State if the City, in the opinion of and by action of the Transportation Board, fails to pursue due diligence on the Project or in the performance of any of the terms of this agreement.

5. This agreement shall become effective upon filing with the Secretary of State.

6. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of State employees

7. The provisions of Arizona Revised Statutes Section 35-214 pertaining to 5 year records retention by the City and audit by the State are applicable to this contract.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement, except as otherwise specified herein, shall be in writing and shall be delivered in person or sent by mail addressed as follows:


Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

City of Tolleson
City Manager
9555 W. Van Buren
Tolleson, AZ 85353

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF TOLLESON, ARIZONA


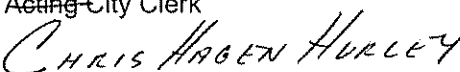
By 
ADOLFO F. GAMEZ

STATE OF ARIZONA

Department of Transportation

By 
MARY LYNN TISCHER, Director
Transportation Planning Division

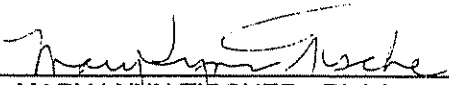
ATTEST:

By 
REYES MEDRANO, JR.
Acting City Clerk

CHRIS HAGEN HURLEY

RESOLUTION

BE IT RESOLVED on this 19th day of March, 2002, that I, the undersigned VICTOR M. MENDEZ, as Director of the ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the STATE OF ARIZONA that the DEPARTMENT OF TRANSPORTATION, acting by and through the TRANSPORTATION PLANNING DIVISION, to enter into an agreement with the CITY OF TOLLESON, for the purpose of defining responsibilities for the acquisition of federal funds, for Maricopa County 85 (Buckeye Road) and 97th Avenue.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Director of Transportation Planning Division, for approval and execution.



MARY LYNN TISCHER, Division Director
for VICTOR M. MENDEZ, Director

**CITY OF TOLLESON
RESOLUTION NO. 898**

A RESOLUTION OF THE CITY OF TOLLESON, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION AND CITY OF TOLLESON, ARIZONA FOR ECONOMIC STRENGTH PROJECT FUNDS.

WHEREAS, the City of Tolleson desires to enter into an agreement with the Arizona Department of Transportation, Intermodal Transportation Division for Economic Strength Project Funds for improvements between 95th and 97th Avenues along Buckeye Road; and

WHEREAS, the Arizona Department of Transportation, Intermodal Transportation Division is authorized to enter into such agreement pursuant to A.R.S. 11-951 through 11-954; and

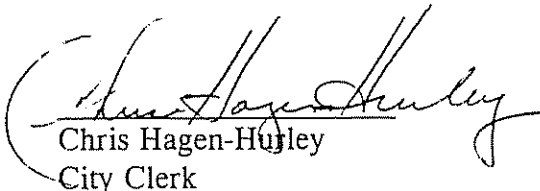
WHEREAS, the City of Tolleson is authorized to enter into such agreement pursuant to A.R.S. 11-952.

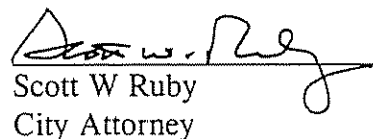
NOW, THEREFORE, BE IT RESOLVED, that the Execution of Said Documents and Agreement are hereby authorized in substantially the form on file with the Tolleson City Clerk and with the Arizona Department of Transportation.

PASSED AND ADOPTED by the Council of the City of Tolleson this 25th day of June 2002.


ADOLFO F. GAMEZ, MAYOR

ATTEST:


Chris Hagen-Hurley
City Clerk


Scott W Ruby
City Attorney

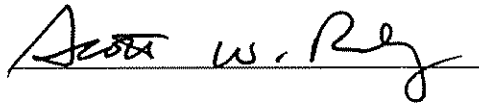
ATTACHMENT A

ECONOMIC STRENGTH PROJECTS FY 2002 ROUND 1 LIST OF PROJECTS RECOMMENDED							
APPLICANT	PROJECT DESCRIPTIONS	COMPANY/ BUSINESS ASSISTED	JOBS CREATED	ESP AMOUNT REQUESTED	LOCAL MATCHING FUNDS	CAPITAL INVESTMENT	ESP AMOUNT RECOMMENDED
City of Tolleson	Reconstruction of 1,080 feet of Buckeye Road	Western Container, a manufacturer of plastic beverage bottles	Construction-82 New FTE – 75	\$76,125	\$177,625, plus, \$0 of infrastructure improvements	\$32,960,000	\$76,125
City of Somerton	Construction of 450 feet of new Bingham Avenue to access project	Hand Properties, a developer, for the construction of a Family Dollar retail store	Construction- 56 New FTE – 7 Retained – 0	\$58,440	\$23,260, plus, \$5,980 of infrastructure improvements.	\$350,000	\$40,000
City of Flagstaff	Extension of Dodge Avenue from Railroad to Old Route 66	Flagstaff Mall, a retail shopping center	Construction-209 New FTE-450 Retained –217	\$500,000	\$1,110,000, plus, \$6,018,500 of infrastructure improvements	\$60,000,000	\$250,000
Pinal County	Reconstruction of 1.25 miles of Houston Avenue	24 small business that are located on that road	Construction-25 New FTE-103 Retained – 118	\$305,506	\$ 204 494, plus, \$152,500 of infrastructure improvements	\$8,585,000	\$133,875
TOTALS			Construction-372 New FTE – 635 Retained – 335	\$940,071	\$1,515,379, plus, \$6,176,980 of infrastructure expenditures	\$101,895,500	\$500,000

APPROVAL OF THE CITY OF TOLLESON ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and CITY OF TOLLESON and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 11th day of June, 2002.



City Attorney



JANET NAPOLITANO
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION
1275 WEST WASHINGTON STREET, PHOENIX, AZ 85007-2926

TRN Main: (602) 542-1680
Direct: (602) 542-8837
Fax: (602) 542-3646
MAIN PHONE : (602) 542-1680
FACSIMILE : (602) 542-3646

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-0540-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED July 3, 2002.

Janet Napolitano
Attorney General

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:744377

Enc.